

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion for the Purpose of
Considering Policies and Guidelines Regarding
the Allocation of Gains from Sales of Energy,
Telecommunications, and Water Utility Assets.

Rulemaking 04-09-003
(September 2, 2004)

**OPINION GRANTING INTERVENOR COMPENSATION
TO AGLET CONSUMER ALLIANCE FOR SUBSTANTIAL CONTRIBUTIONS
TO DECISION 06-05-041**

This decision awards Aglet Consumer Alliance (Aglet) \$16,819.56 in compensation for its substantial contributions to Decision (D.) 06-05-041. Today's award will be paid from the Commission's intervenor compensation program fund. This proceeding remains open to consider three issues deferred in D.06-05-041.¹

Background

The Commission opened this proceeding to develop gain on sale rules applicable to the water, energy and telecommunications industries. In D.06-05-041, the Commission adopted such rules. Aglet participated actively in the proceeding, submitting detailed briefs and comments on the draft decision.

¹ Those issues are reflected in the June 29, 2006 ruling of Administrative Law Judge (ALJ) Thomas, available at <http://www.cpuc.ca.gov/PUBLISHED/RULINGS/57663.htm>.

While a few issues remain, D.06-05-041 resolved most of the issues presented in Rulemaking (R.) 04-09-003.

Requirements for Awards of Compensation

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers. (Subsequent statutory references are to the Public Utilities Code unless otherwise indicated.)

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (PHC), or in special circumstances at other appropriate times that we specify. (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
3. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate "significant financial hardship." (§§ 1802(g), 1804(b)(1).)
5. The intervenor's presentation must have made a "substantial contribution" to the proceeding, through the adoption, in whole or in part, of the intervenor's contention or recommendations by a Commission order or decision. (§§ 1802(i), 1803(a).)

6. The claimed fees and costs are reasonable (§1801), necessary for and related to the substantial contribution (D.98-04-059), comparable to the market rates paid to others with comparable training and experience (§1806), and productive (D.98-04-059).

For discussion here, the procedural issues in Items 1-4 above are combined, followed by separate discussions on Items 5-6.

Procedural Issues

No prehearing conference in this matter was held. Ordinarily, a party is required to file a notice of intent to claim intervenor compensation after a prehearing conference. If no prehearing conference is held, the intervenor must show in its request for intervenor compensation that it meets the requirements of the intervenor compensation statute. Aglet has done so in its request.

Section 1802(b)(1) defines a “customer as A) a participant representing consumers, customers or subscribers of a utility; B) a representative who has been authorized by a customer; or C) a representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential or small business customers.” In this case, Aglet is a customer as defined in paragraph C because Aglet is a group authorized pursuant to its articles of organization and bylaws to represent and advocate the interests of residential and small commercial customers of electrical, gas, water and telephone utilities in California. Copies of Aglet's articles and bylaws are attached to a notice of intent to claim compensation filed on June 11, 1999 in Application (A.) 99-03-014. There has been no change to Aglet's articles and bylaws since that filing. Aglet is not established or formed by a local government entity for the purpose of participating in a Commission proceeding.

Aglet asserts that it meets the financial hardship condition of the intervenor compensation statute through a rebuttable presumption of eligibility,

pursuant to §1804(b)(1), because Aglet met this requirement in another proceeding within one year of the commencement of this proceeding (ALJ ruling dated August 3, 2004, in A.04-05-021 et al.). Aglet therefore qualifies for a ruling of eligibility for compensation on the merits of this pleading and through the rebuttable presumption created in A.04-05-021 et al.

Aglet filed its request for compensation on June 20, 2006, within 60 days of D.06-05-041 being issued.² In view of the above, we find that Aglet has satisfied all the procedural requirements necessary to make its request for compensation in this proceeding.

Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? (See §1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (See §§1801.3(f) and 1802.5.) As described in §1802(i), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders

² No party opposes the request.

in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.³

Should the Commission not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could find that the customer made a substantial contribution. With this guidance in mind, we turn to the claimed contributions Aglet made to the proceeding.

Aglet's Director James Weil participated by preparing and filing five pleadings: opening and reply comments on issues identified in the Order Instituting Rulemaking (OIR); reply comments on the draft decision of Commissioner Brown; and opening and reply comments on the alternate draft decision of Commissioner Chong. Aglet was very successful in persuading the Commission to adopt Aglet's recommendations and, even when not wholly successful, Aglet influenced the Commission's reasoning. Thus, Aglet made a substantial contribution, as claimed.

Allocation Based on Risk. The OIR proposed that, "A return to the prominent use of the incidence of risk should be the primary standard for the efficient allocation of gain." (OIR, slip op. at 36.) The energy and water utilities opposed the OIR's conclusions about risks. On the other hand, "The consumer advocates (ORA/TURN and Aglet) agree[d] with the risk premise."

³ D.98-04-059, 79 CPUC2d 628, 653 (1998).

(D.06-05-041, slip op. at 20.)⁴ ORA and TURN participated jointly, leaving Aglet as a second voice in support of allocation of gains and losses based on assessment of risks. In several places in the decision, the Commission cited Aglet's position on utility and ratepayer risks. (D.06-05-041, slip op. at 20, 21, 23, 25.) The Commission also issued many findings and conclusions regarding risk. (D.06-05-041, Findings of Fact 10-18, slip op. at 86-87, Conclusions of Law 2-7, slip op. at 90.) Aglet prevailed on this central issue.

While the Commission did not adopt Aglet's recommendation regarding percentage sharing of gains and losses, Aglet contributed to the Commission's reasoning on risks faced by utilities and ratepayers. Thus, Aglet is eligible for compensation on this issue

Routine Retirements. In response to the draft decision of Commissioner Brown, the major energy utilities commented that gain on sale rules should not apply to routine retirement of depreciable assets. Each utility proposed different language to define the exclusion. Aglet did not oppose exclusion of routine retirements, but supported exclusion of "routine retirement and salvage of depreciable assets that are no longer used and useful," as recommended by Pacific Gas and Electric Company (PG&E). Aglet opposed more general language regarding "disposition" of assets and a proposed rule that would have linked depreciable and nondepreciable property. The Commission adopted the language Aglet supported. (D.06-05-041, Ordering Paragraph 26, slip op. at 100.) Thus, Aglet prevailed on this issue and is entitled to compensation.

⁴ The Commission's Office of Ratepayer Advocates (ORA) became the Division of Ratepayer Advocates effective January 1, 2006, pursuant to Senate Bill 608. The Utility Reform Network (TURN) is another intervenor in this proceeding.

Exception to General Rule in Extraordinary Circumstances. In its comments on the OIR, Aglet proposed that we set a general rule for most gains/losses on sale, but create an exception for extraordinary cases. D.06-05-041 adopted this suggestion.

Dollar Limits for Routine Asset Sales. Aglet recommended that the adopted rules should not apply to assets with a sale price that exceeds \$50 million, or to gains or losses that exceed \$10 million. (Aglet reply comments, December 8, 2004, p. 4.) The Commission adopted those limits “as Aglet proposes.” (D.06-05-041, slip op. at 38, Ordering Paragraph 4, slip op. at 95.)

Assets In and Out of Rate Base. For assets that move in and out of rate base over time, Aglet recommended adoption of a rebuttable presumption that gains or losses should be determined based on the length of time in or out of rate base. (Aglet reply comments, December 8, 2004, pp. 5-6.) The Commission adopted the rebuttable presumption. (D.06-05-041, Ordering Paragraph 14, slip op. at 97.)

Reasonableness of Requested Compensation

Aglet requests \$16,819.56 for the participation of James Weil, its Director, in this proceeding for work performed in 2004 and 2006, as follows:

TABLE 1. COMPENSATION REQUESTED	
\$ 14,900.00	59.6 hours of Weil's professional time, at \$250 per hour
1,725.00	13.8 hours travel and compensation time, at \$125 per hour
65.66	Copies
42.64	Postage, overnight delivery
+ 86.26	Travel costs (bridge toll, parking, vehicle mileage)
\$ 16,819.56	Total request

Aglet also allocated its time by issue:

TABLE 2. ALLOCATION OF WEIL'S PROFESSIONAL TIME BY MAJOR ISSUE	
Cost Category	Compensation Hours
General work	2.3
Issues:	
Allocation based on risk	26.0
Routine Retirements	11.9
Other issues	19.4
Issues subtotal	57.3
Total	59.6

In general, the components of this request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that resulted in a substantial contribution. The issues we consider to determine reasonableness are discussed below.

Hours and Costs Related to and Necessary for Substantial Contribution

We first assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable by determining to what degree the hours and costs are related to the work performed and necessary for the substantial contribution.

Aglet documented its claimed hours by presenting a daily breakdown of its hours, accompanied by a brief description of each activity. The hourly breakdown reasonably supports the claim for total hours. Since we find that Aglet's efforts made a substantial contribution to D.06-05-041, even where we did not wholly adopt Aglet's recommendation, we need not exclude from Aglet award compensation for certain issues.

Market Rate Standard

We next take into consideration whether the claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services.

Aglet seeks an hourly rate of \$250 for work performed by Weil in 2004 and 2006. We previously approved this rate for 2004 in D.04-12-039, slip op. at 6-8, Finding of Fact 2 at 9. Weil does not seek an increase for 2006, and we adopt that rate for 2004 and 2006.

Productivity

D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through their participation. This showing assists us in determining the overall reasonableness of the request.

The most apparent benefit of Aglet's participation is ratepayer retention of one half of gains on sale of real property. The Commission rejected utility requests that shareholder keep all such gains. The dollar value to ratepayers of this outcome is uncertain, but it could reach millions of dollars in the event a utility sells a single parcel of real property. If one gives Aglet even a small share of the credit for this outcome, the ratepayer benefits of Aglet's participation in this proceeding will substantially exceed Aglet's costs. Ratepayers will also gain intangible benefits from the setting of reasonable dollar limits for the adopted rules, and from Aglet's contributions regarding assets that move in and out of rate base.

We find that Aglet's participation in this proceeding was productive. Overall, the benefits of Aglet's contributions to D.06-05-041 justify compensation in the amount requested.

Direct Expenses

The itemized direct expenses submitted by Aglet include costs for travel, photocopying, postage and overnight mail and total \$194.56. The cost breakdown included with the request shows the miscellaneous expenses to be commensurate with the work performed. We find these costs reasonable.

Award

As set forth in the table below, we award Aglet \$16,819.56.

\$ 14,900.00	59.6 hours of Weil's professional time, at \$250 per hour
1,725.00	13.8 hours travel and compensation time, at \$125 per hour
65.66	Copies
42.64	Postage, overnight delivery
+ 86.26	Travel costs (bridge toll, parking, vehicle mileage)
\$ 16,819.56	Total request

This rulemaking proceeding affected a broad array of utilities. As such, we find it appropriate to authorize payment of the compensation award from the Commission's intervenor compensation program fund, as described in D.00-01-020.

Consistent with previous Commission decisions, we order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing on September 3, 2006, the 75th day after Aglet filed its compensation request, and continuing until full payment of the award is made.

We remind all intervenors that Commission staff may audit their records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Aglet's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner, and Sarah R. Thomas is the assigned ALJ in this proceeding.

Findings of Fact

1. Aglet has satisfied all the procedural requirements necessary to claim compensation in this proceeding.
2. Aglet made a substantial contribution to D.06-05-041 as described herein.
3. Aglet requested hourly rates that are reasonable when compared to the market rates for persons with similar training and experience.
4. Aglet requested related expenses that are reasonable and commensurate with the work performed.
5. The total of the reasonable compensation is \$16,819.56.
6. This proceeding affected a broad array of utilities.
7. The appendix to this opinion summarizes today's award.

Conclusions of Law

1. Aglet has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed compensation incurred in making substantial contributions to D.06-05-041.
2. Aglet should be awarded \$16,819.56 for its contribution to D.06-05-041.
3. Per Rule 77.7(f)(6), the comment period for this compensation decision may be waived.
4. Today's award should be paid from the Commission's intervenor compensation program fund.
5. This order should be effective today so that Aglet may be compensated without further delay.

O R D E R

IT IS ORDERED that:

1. Aglet Consumer Alliance (Aglet) is awarded \$16,819.56 as compensation for its substantial contributions to Decision (D.) 06-05-041.
2. Within 30 days of the effective date of this decision, Aglets' award shall be paid from the Commission's intervenor compensation program fund, as described in D.00-01-020. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning September 3, 2006, the 75th day after the filing date of Aglet's request for compensation, and continuing until full payment is made.

3. The comment period for today's decision shall be waived.

This order is effective today.

Dated_____, at San Francisco, California.

Compensation Decision Summary Information

Compensation Decision:		Modifies Decision? No
Contribution Decision(s):	D0605041	
Proceeding(s):	R0409003	
Author:	ALJ Thomas	
Payer(s):	Intervenor Compensation Program Fund	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/ Disallowance
Aglet Consumer Alliance	June 20, 2006	\$16,819.56	\$16,819.56	No	

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
James	Weil	Policy Expert	Aglet Consumer Alliance	\$250	2004	\$250
James	Weil	Policy Expert	Aglet Consumer Alliance	\$250	2006	\$250